

LAW OFFICES OF DENNIS J. NILES

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judy.tanaka@ahfi.com

Attorneys for Petitioner

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In re Petition of)	DOCKET NO. _____
Trilogy Corporation)	
For Declaratory Ruling)	PETITION FOR DECLARATORY
)	RULING; EXHIBITS "1" - "14"
)	
)	
)	
_____)	

PETITION FOR DECLARATORY RULING

Pursuant to Section 13-1-27 of the Hawaii Administrative Rules
("HAR"), Petitioner Trilogy Corporation, through its undersigned attorneys,

Item J-1

RECEIVED
12 JUL -2 P3:54
DEPT OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

petitions the Board of Land and Natural Resources, State of Hawaii, for the following declaratory rulings:

1. Designation of the Trilogy pier and berth at Manele Small Boat Harbor ("SBH") for use as a public loading zone pursuant to HAR § 13-231-44 would implement or prescribe law or policy and affect private rights in violation of the Hawaii Administrative Procedure Act ("HAPA"); and,
2. Division of Boating and Ocean Recreation ("DOBOR") should not make any substantive changes to the terms and conditions of the mooring permit and addenda Petitioner holds for Manele berth 24 without first determining such changes are practicable, warranted and necessary for the safe, convenient and efficient utilization of Manele SBH facilities.

In support of its petition for declaratory ruling, Petitioner respectfully shows as follows:¹

I. PETITIONER

Petitioner Trilogy Corporation is a Hawai'i corporation, and is approaching its 40-year mark of doing business on the Islands of Lanai and Maui. Its principal office is located at 180 Lahainaluna Road, Lahaina, Maui, Hawai'i, 96761, and its telephone number is (808) 661-4743.

¹ On request of the Board staff or counsel, Petitioner will provide copies of referenced documents which are not already attached as exhibits.

II. STATEMENT OF PETITIONER'S INTEREST

Petitioner's mooring and commercial permits for berth 24 at the Manele SBH are up for reissuance in September 2012. Prior to such reissuance, Petitioner requires confirmation that its pier and berth will not be designated for use as a public loading zone. Designating the Trilogy pier as a "public loading dock" would render it and at least a portion of the adjoining water column a "vessel loading zone" within the meaning of HAR § 13-231-44. As such, Petitioner's assigned berth would be open to any vessel for "loading, unloading or fueling." *Id.* Concomitantly, Petitioner's use would be shared, not preferential, and limited to thirty minutes. These changes would profoundly curtail if not destroy entirely Petitioner's ability to profitably operate under its existing mooring and commercial permits.

III. STATUTE/RULES IN QUESTION

1. Hawaii Administrative Procedure Act, Hawaii Revised Statutes Ch. 91.
2. Hawaii Administrative Rules, §§ 13-231-17(a), 13-231-44, and 13-231-80.

IV. CONCISE STATEMENT OF PETITIONER'S POSITION

Designating as a "public loading dock" the 17 by 60 foot facility constructed and used by Petitioner at Manele SBH would constitute a rule within the meaning of HAPA and could be lawful only after DOBOR (1) confirms the absence and impracticality of less restrictive alternatives and (2) complies with HAPA's rulemaking requirements.

Further, there can be no substantive changes to the terms and conditions of the mooring permit and addenda Petitioner holds for Manele berth 24 without DOBOR first determining such changes are warranted and necessary for the safe, convenient and efficient utilization of Manele SBH facilities and that less drastic alternatives are absent or impracticable.

V. SUPPORTING FACTS AND AUTHORITIES

Since 1977, Petitioner has moored a commercial vessel at Manele berth 24. See Mooring Agreement dated April 15, 1977, a copy of which is attached to this Petition as Exhibit 1. In or about 1985, Petitioner at its sole expense and with the approval of the Department of Transportation undertook to place a loading dock and rock groin adjacent to berth 24. See DOT, Harbors Division memo dated June 30, 1986, a copy of which is attached to this Petition as Exhibit 2. The project included partial dredging of the berth. *Id.* The project was substantially complete by 1988. The pier may be seen in an aerial photograph, taken shortly after its completion, found on DOBOR's website. See http://hawaii.gov/dlnr/dbor/images/manele_lrg.jpg; a copy of the photograph is attached as Exhibit 3 to this Petition.

By letter dated February 13, 1989, the Maui District Manager of the Harbors Division confirmed "[a]pproval for the construction of this facility at Berth 24 was given under the provisions of Section 19-62-43, Hawaii Administrative Rules for Small Boat Harbors and HAR-EC 303 dated July 3, 1986." A copy of the February 13, 1989 letter is attached hereto as Exhibit 4. The letter also confirmed Petitioner's authorization to use the newly completed

“facility” to moor three vessels. *Id.* A May 1993 Master Plan for Manele SBH prepared by DOBOR refers to the area occupied by Trilogy as the “commercial docks.” A copy of the 1993 Master Plan is attached hereto as Exhibit “5.”

By letter dated March 7, 2000, the Acting Administrator of DOBOR thanked James Coon, Vice President of Petitioner, for his continued support and involvement in the Manele Small Boat Harbor Boating Program and outlined changes his staff was recommending. A copy of the March 7, 2000 letter is attached to this Petition as Exhibit 6. The recommendations included adding parking and off loading space “adjacent to the Trilogy/Expositions (sic) Wharf.” *Id.*

In July 2003, Mr. Coon on behalf of Petitioner informed the U.S. Army Corps of Engineers of its plans to repair the Trilogy dock. US Army Engineer ACE authorized the work to be completed by September 2005. *See* letter dated September 9, 2003, a copy of which is attached hereto as Exhibit 7. In mid-September 2003, the Office of Planning, Department of Business, Economic Development & Tourism, advised Mr. Coon of the approval of Petitioner’s “proposal to repair the Trilogy dock at Manele Small Boat Harbor, Lanai . . . for CZM federal consistency by the Hawaii CZM program.” *See* letter dated September 17, 2003, a copy of which is attached to this Petition as Exhibit 8.

Following inspection of the loading dock in 2004, DOBOR wrote Mr. Coon acknowledging Petitioner was in the process of completing the repairs but expressing concern for the safety of the facility “until structural repairs

have been completed.” See letter dated May 3, 2004, a copy of which is attached hereto as Exhibit 9. DOBOR observed: “The Trilogy pier was originally constructed by Trilogy to ease congestion at the small boat-loading pier [the public loading dock adjacent to berth 1].” *Id.* Petitioner completed renovation of the dock in 2005. The work entailed the addition of wooden beams, new deck boards, and concrete footings.

In March 2012, Mr. Coon, on behalf of Petitioner, attended a meeting of the Manele Harbor Advisory Council. Present also were DOBOR staff engineer Eric Yuasa and Manele Harbor Agent Sherry Menze. The ostensible purpose of the meeting was to discuss renovation of harbor facilities damaged as a result of the March 2011 tsunami. To this end, DOBOR staff distributed copies of an undated and unsigned “Damage Assessment Report for the Manele Small Boat Harbor, Lanai, Hawaii” (hereinafter, the “DAR”). A copy of the DAR is attached hereto as Exhibit 10. Importantly it reflects DOBOR’s determination that the Trilogy pier could be safely used to load and unload passengers.

However, DOBOR staff also passed out an undated document entitled “Manele Small Boat Harbor Ferry Pier.” The document describes replacement of the adjoining ferry and Trilogy piers at some point after their repair using FEMA funds. The longer term project involves “a similar size or smaller structures, which will be located with the existing foot prints of both piers.” A copy of the Ferry Pier document is attached hereto as Exhibit 11; the project is depicted in the March 30, 2012 Conceptual Plan for Manele SBH

Tsunami Damage Repairs attached hereto as Exhibit 12. Trilogy's pier is the green shaded area to the left of the rock groin (originally placed by Trilogy with state approval).

The DAR and Ferry Pier document were the first public disclosure of DOBOR's characterization of the Trilogy pier as a "public loading dock." See attached Exhibits 10 and 11. Under heading "Public Loading Dock (Trilogy Pier)," the assessment refers to the 17 by 60 foot structure built by Petitioner at its sole expense as "the public loading dock." See attached Exhibit 10. Similarly, the description of the proposed ferry pier in Exhibit 11 refers to "the existing wooden ferry pier and public loading dock." This description is also misleading. It suggests the Trilogy pier currently "serves seven privately owned boats that have permits to transport passengers between Maui and Lanai." In fact, the four permitted vessels not operated by Trilogy use the public loading dock on the opposite side of the harbor.

In September 2011, DOBOR processed the annual renewal of Petitioner's mooring and commercial permits for berth 24. A copy of Petitioner's permits is attached as Exhibit 13 to this Petition. The renewed mooring permit was accompanied by addenda allowing use of the berth by three vessels. *Id.* A scaled schematic of the three Trilogy vessels at berth 24 is attached as Exhibit 14 to this Petition.

The decades long history of annual renewal of Petitioner's permits reflects repeated determination that Plaintiff's use of berth 24 "affords maximum, safe, convenient, and efficient utilization of facilities," and was not

otherwise “contrary to public interests, or otherwise unlawful or contrary to these rules.” See HAR § 13-231-80. Multiple use of the berth was first sanctioned by the Harbors Division decades ago, a practice DOBOR has ratified every year since 1994. This history reflects repeated determination that the berth assignment “affords maximum, safe, convenient, and efficient utilization of facilities,” and was not otherwise “contrary to public interests, or otherwise unlawful or contrary to these rules,” as required by HAR § 13-231-80.

The permit and addenda (Exhibit 13) effectively grant Petitioner exclusive use of the water column comprising the berth. HAR § 13-231-17(a), for example, prohibits mooring “[a]t a small boat harbor . . . or space other than that to which it was properly assigned.”

Nevertheless, the implications of the mischaracterization of the Trilogy pier became clear at the recent meeting of the Manele Harbor advisory council. DOBOR plans to treat the Trilogy pier as a public loading dock and dramatically curtail Petitioner’s use of it. Regrettably, this decision was reached without consultation with Petitioner, the longest continuous commercial user of Manele SBH.

No fact or concern justifies expropriating the Trilogy pier and assigned berth for use as a public loading zone. The designation is not required for efficient operation of the ferry and would serve only to exacerbate congestion at the public loading dock.

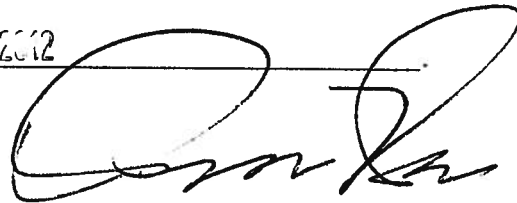
VI. CONCLUSION

For the foregoing reasons, Petitioner requests that this Honorable Board issue a declaratory order that:

a. Designation of the Trilogy pier and berth for use as a public loading zone would implement or prescribe law or policy and affect private rights in violation of the Hawaii Administrative Procedure Act; and,

b. DOBOR may not make substantive changes to the terms and conditions of Petitioner's mooring permit and the addenda authorizing multiple use of Manele berth 24 so that the Trilogy pier and the berth 24 may be used as a public loading zone without first determining such changes are practicable, warranted and necessary for the safe, convenient and efficient utilization of Manele SBH facilities, followed by the adoption of properly adopted administrative rule.

DATED: JUL 02 2012



LAW OFFICES OF DENNIS J. NILES
ALSTON HUNT FLOYD & ING

DENNIS NILES
JAMES K. TAM
JUDY A. TANAKA
Attorneys for Petitioner

PETITIONER:

Trilogy Corporation,

By _____
RANDOLPH S. COON
Its President

VI. CONCLUSION

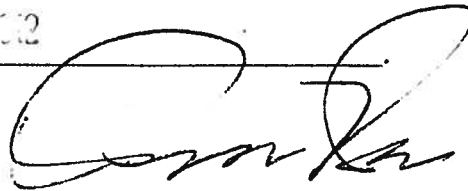
For the foregoing reasons, Petitioner requests that this Honorable Board issue a declaratory order that:

a. Designation of the Trilogy pier and berth for use as a public loading zone would implement or prescribe law or policy and affect private rights in violation of the Hawaii Administrative Procedure Act; and,

b. DOBOR may not make substantive changes to the terms and conditions of Petitioner's mooring permit and the addenda authorizing multiple use of Manele berth 24 so that the Trilogy pier and the berth 24 may be used as a public loading zone without first determining such changes are practicable, warranted and necessary for the safe, convenient and efficient utilization of Manele SBH facilities, followed by the adoption of properly adopted administrative rule.

DATED: _____

JUL 6 8 2002



LAW OFFICES OF DENNIS J. NILES
ALSTON HUNT FLOYD & ING

DENNIS NILES
JAMES K. TAM
JUDY A. TANAKA
Attorneys for Petitioner

PETITIONER:

Trilogy Corporation,



By _____
RANDOLPH S. COON
Its President

09917

Type of Agreement:

Permanent ☒Renewal ☐Revision ☐Temporary ☐

Other _____

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

MOORING AGREEMENT

Date April 15, 19 77

This Agreement is for a mooring berth at MANELE BOAT HARBOR
 at Berth No. 24 for boat registered No. 529-992
 Name of Boat WHITE BIRD Length 40 ft.

I agree to the following terms, conditions and charges:

1. I agree to abide by all rules and regulations promulgated by the Department of Transportation.
2. The boat will be moored at the location designated by the official representative of the Department of Transportation and tied up in a manner approved by him.
3. Mooring charges are to be paid monthly in advance on or before the first day of each month at the office of the Harbors Division, Department of Transportation. A use permit may be cancelled by a boat owner upon 30 days written notice as prescribed in Section 3.09 and charges will be made in accordance with Section 12.02 (4) of the SBH Rules & Regulations.
4. The charge for this mooring will be at the rate of \$ 18.00 DH per month.
5. This mooring privilege may be terminated by the Department of Transportation by either verbal or written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise.
6. The Department of Transportation, its members, officers, agents and employees shall not be liable to me or to any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents and employees from any and all manner of actions, liability, and claims arising out of or incident to said mooring.
7. I fully understand that these mooring charges are only for the privilege of mooring my boat at the designated location. Any other use of Harbor property and services must be requested and approved on Form Dot 3-087, Addendum to Mooring Agreement.
8. This Mooring Agreement shall not exceed one (1) year from 4/15/77 ^{date}, and unless it is renewed before the expiration date, the mooring right under this Agreement terminates on 4/14/78 ^{dated}. This Mooring Agreement shall not be renewed unless all fees and charges due and payable are paid. (Sec. 3.05 of the Rules and Regulations).
9. No person shall live aboard the boat in the harbor.

Jeannette M. Coon Boat Owner
Box 1121
Lahaina, HI 96761

Home Address Box 1121, Lahaina

APPROVED:

DEPARTMENT OF TRANSPORTATION
HARBORS DIVISIONBy J. Stanley

4-2-14

... 1964-1965

[Faint handwritten notes and markings are visible at the bottom of the page.]

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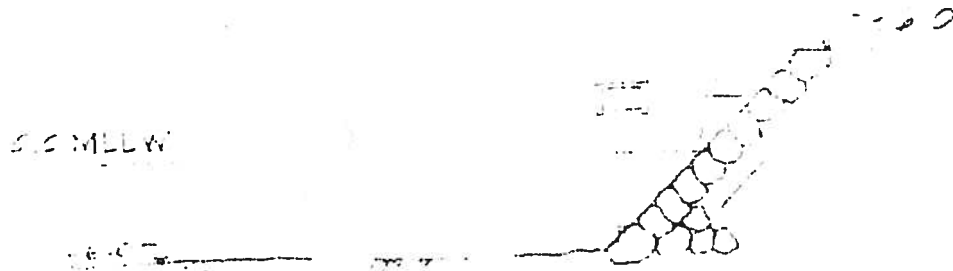
1000  # Apply the fitted model to the test data
1001  test_predictions = model.predict(test_data)
1002
1003  # Evaluate the model's performance on the test data
1004  test_loss = calculate_loss(test_data, test_predictions)
1005  print(f"Test Loss: {test_loss}")
1006
1007  # Save the trained model
1008  save_model(model, "trained_model.pkl")
1009
1010  # Load the trained model
1011  loaded_model = load_model("trained_model.pkl")
1012
1013  # Make predictions using the loaded model
1014  loaded_predictions = loaded_model.predict(test_data)
1015
1016  # Evaluate the loaded model's performance
1017  loaded_test_loss = calculate_loss(test_data, loaded_predictions)
1018  print(f"Loaded Model Test Loss: {loaded_test_loss}")
1019
1020  # Clean up
1021  del model
1022  del test_data
1023  del test_predictions
1024  del test_loss
1025  del loaded_model
1026  del loaded_predictions
1027  del loaded_test_loss
1028
1029  # End of script
1030

```

h'o

E LOADING DOCK
STA. 0+9.5

TOP OF ROCK WALL
STA. 0+10



① SECTION
SCALE: 1"=10'

E STA. 0+12.5

E LOADING
DOCK
STA. 0+9.5

E GROIN
STA. 0+30



② SECTION
SCALE: 1"=10'

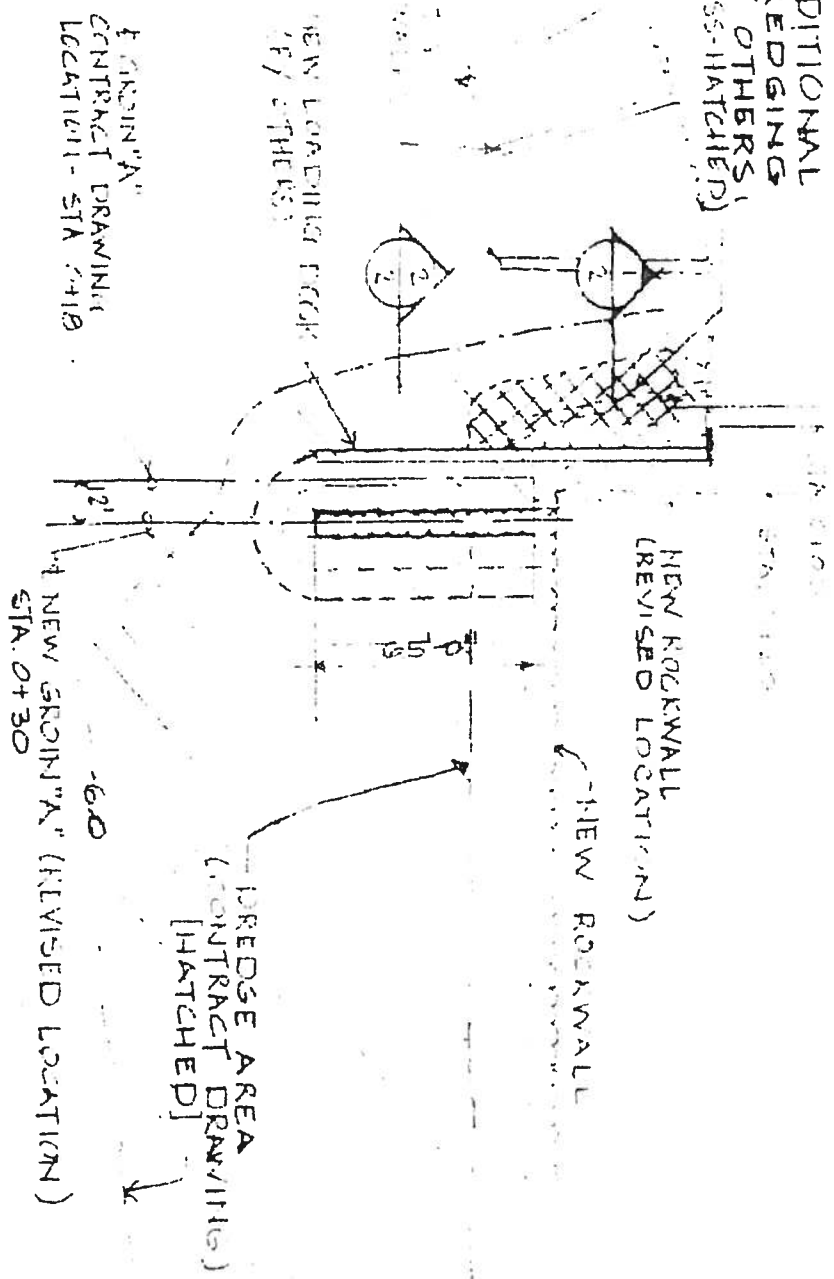
MANELE BOAT HARBOR IMPROVEMENTS
LANAI, HAWAII

JOB H.C. 4082

12/25/85 CO

ADDITIONAL
DREDGING
BY OTHERS
(CROSS-HATCHED)

CONTRACT DRAWINGS
NEW ROCKWALL LOCATION



PART PLAN

SCALE: 1" = 50'

MANELE BOATHARBOR IMPR.
MANELE, LANAI

REVISION #1 - NEW GROIN & ROCKWALL
LOCATION

100 110 120 130 140 150

SHEET 1 OF 2 SHOTS



EXHIBIT 3



EDWARD Y. HIRATA
DIRECTOR

DEPUTY DIRECTORS
JOHN K. UCHIMA
RONALD N. HIRANO
DAN T. KOCHI
JEANNE K. SCHULTZ

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
P.O. BOX 216
KAHULUI, MAUI, HAWAII 96732

IN REPLY REFER TO:

HAR-M
431

February 13, 1989

Mr. James E. Coon
Trilogy Excursions
P. O. Box 1121
Lahaina, HI 96767-1121

Dear Mr. Coon:

This is further to our meeting of February 6, 1989 regarding the use of Berth No. 24, Manele Harbor by the three vessels of your firm.

Approval for the construction of this facility at Berth 24 was given under the provisions of Section 19-62-43, Hawaii Administrative Rules for Small Boat Harbors and HAR-EC 303 dated July 3, 1986 (copy attached). In this regard you are authorized to berth your three (3) vessels in order to minimize the impact on the public loading dock at Berth No. 1. A copy of this letter should be retained by you aboard each of your three vessels at all times. You are also reminded that your slip fee will be based on the fee schedule for the largest vessel using Berth No. 24.

Should you have questions regarding this mater, please contact this office.

Sincerely,

Harold T. Campbell
Maui District Manager

HTC:cte
Attachment
cc: Harbor Agent Manele

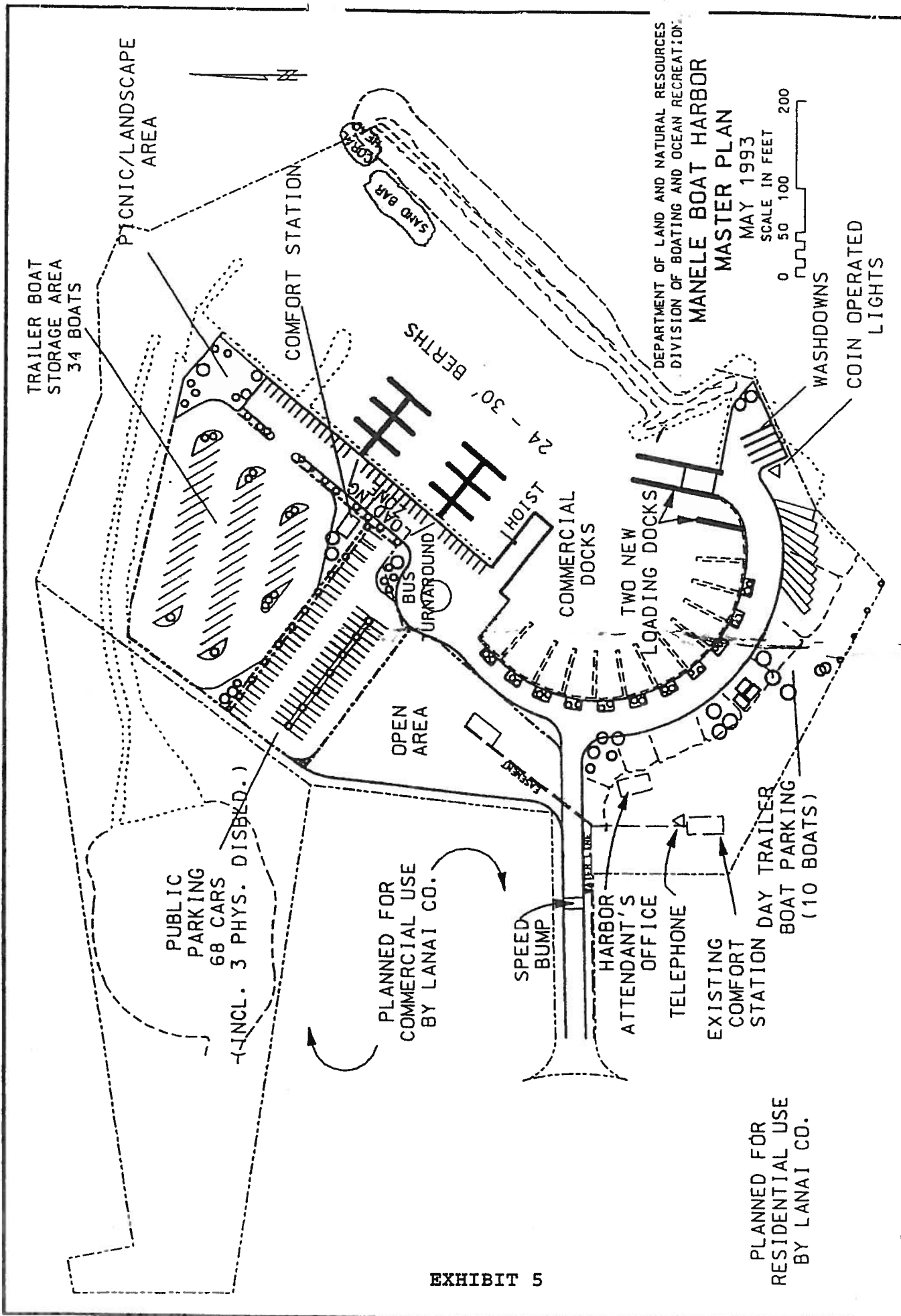


EXHIBIT 5

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



TIMOTHY E. JOHNS
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY DIRECTOR
JANET E. KAWELO

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
333 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813

March 7, 2000

BOR-E 0508.00

Mr. James Coon
P. O. Box 1119
Lahaina, Hawaii 96767-1119

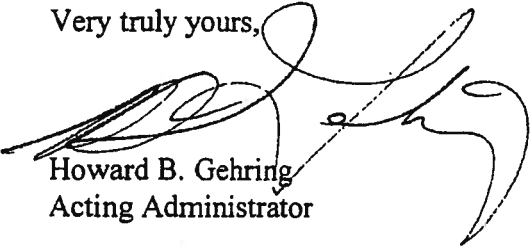
Dear Mr. Coon:

SUBJECT: Manele Small Boat Harbor Mini-Master Plan, Lanai 7

Thank you for your continued support and involvement in the Manele Small Boat Harbor Boating Program. We appreciate the active participation of the people of Lanai Community in the planning for the development and improvement of our Manele SBH. The eighteen-month efforts of all participants have resulted in the unanimous endorsement of the subject Mini-Master Plan during the Manele Advisory Committee meeting on February 17, 2000. Three recommendations were made during this meeting: (1) delete the comfort station and parking at the north end of the harbor, (2) provide a two-way traffic system from the main access road to the dry storage parking lot, and (3) relocate the parking stalls for the physically handicapped, and add more off-loading and loading space adjacent to the Trilogy/Expositions Wharf. The mini-master plan was subsequently revised in accordance with these recommendations. A copy of this revised plan, together with a preliminary cost estimate of the planned improvements, is enclosed for your use and information.

Should you have any questions, please call me at (808) 587-1966, or contact Charles Penque, our Maui District Manager, at (808) 243-5824.

Very truly yours,


Howard B. Gehring
Acting Administrator

Enclosure

cc: Charles Penque, Maui District Manager
Sherry Menze, Manele Harbor Agent
John Hino, Boating Property Manager



DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT HONOLULU
FT SHAFTER HAWAII 96858-5440

REPLY TO
ATTENTION OF

September 9, 2003

Regulatory Branch

Mr. James E. Coon, CEO
Trilogy
180 Lahainaluna Road
Lahaina, Hawaii 96767

Dear Mr. Coon:

This responds to your letter dated July 1, 2003 concerning authorization to repair your dock at Manele Small Boat Harbor.

Based on the information you provided I have verified that the proposed work is authorized under the Corps' Nationwide permit authority at 33 CFR 330, Paragraph B. 3 (Maintenance). No further DA processing is necessary provided the activity complies with the enclosed Nationwide Permit General Conditions. It is your responsibility to read and become familiar with these conditions in order to ensure that the activity authorized herein complies with them. General condition 14 requires that a signed certification be submitted upon completion of the work. Please sign, date and return the enclosed certification form after work is completed.

This authorization under Nationwide Permit #3 will expire on September 8, 2005 and can be extended if necessary. You must request an extension not less than 90 days prior to the expiration date.

The following Special Conditions apply to this authorization.

a. You must comply with the conditions for NWP # 3 contained in the Hawaii Coastal Zone Management (CZM) Program Federal Consistency for the Reissuance of Nationwide Permits, dated July 8, 2002 (copy enclosed).

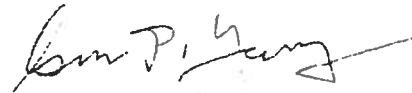
EXHIBIT 7

b. Endangered Hawaiian monk seals and hawksbill turtles, and threatened green turtles are found in the near shore waters of Lanai. If during project activities, protected species enter the project area, activities must cease until the animal(s) voluntarily leaves the area.

c. All project personnel should be informed of the status of the listed species and the protections afforded to the species under federal laws. A brochure explaining the laws and guidelines for listed species in Hawaii may be downloaded from http://www.nmfs.noaa.gov/prot_res/MMWatch/Hawaii.htm

Should you have questions regarding this authorization, please contact Mr. William Lennan of my staff at 438-6986 (FAX 438-4060). Any mailed correspondence concerning this authorization should be addressed to: Regulatory Branch (CEPOH-EC-R/W.Lennan); U.S. Army Engineer District, Honolulu; Building 230; Fort Shafter, Hawaii 96858-5440. File number 200300485 has been assigned to this project. A copy of this letter was provided to the National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814-0047; the State of Hawaii Coastal Zone Management Program, P.O. Box 2359, Honolulu, Hawaii 96804; and the State Historic Preservation Officer, 601 Kamokila Boulevard, Room 555, Kapolei, Hawaii 96707.

Sincerely,



George P. Young, P.E.
Chief, Regulatory Branch

Enclosures

FILE NUMBER

DATE OF ISSUANCE: 9 September 1966

Name of Permittee

Mrs. James E. Sharp, CM

Topology

100 Lahaina Road

Lahaina, Hawaii 96767

Upon completion of the activities authorized by this
Notification permit, and any extensions granted by the Bureau,
please sign this notification and return it to the following
address:

Regulatory Branch (ICRPH-EC-R/W, Lennan)

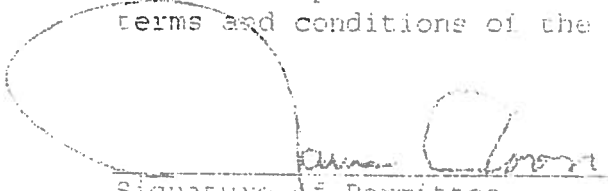
U.S. Army Engineer District, Honolulu

Building 230

Fort Shafter, Hawaii 96858-3440

Please note that your permitted activity is subject to a
compliance inspection by a U.S. Army Corps of Engineers
representative. If you fail to comply with this permit, you are
subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above
referenced permit has been completed in accordance with the
terms and conditions of the said permit.


Signature of Permittee

2-06-66
Date



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

OFFICE OF PLANNING

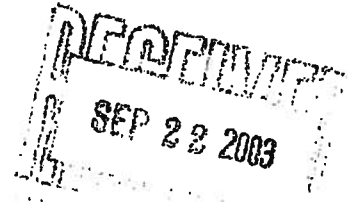
235 South Beretania Street, 8th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
RAYMOND M. JEFFERSON
DEPUTY DIRECTOR
MARY LOU KOBAYASHI
PLANNING PROGRAM ADMINISTRATOR
OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824

Ref. No. P-10216

September 17, 2003



Mr. James E. Coon, CEO
Trilogy
180 Lahainaluna Road
Lahaina, Hawaii 96767

Dear Mr. Coon:

Subject: Hawaii Coastal Zone Management (CZM) Program Federal Consistency
Review for the Repair of the Trilogy Dock at Manele Small Boat Harbor,
Lanai; Department of the Army Permit File No. 200300485

Your proposal to repair the Trilogy dock at Manele Small Boat Harbor, Lanai, has been approved for CZM federal consistency by the Hawaii CZM Program. When the CZM Program issued its general concurrence for the Corps of Engineers Nationwide Permit No. 3, we added a condition that a pre-construction notification shall be provided to us. This condition has been fulfilled for this project, and no further CZM federal consistency review is required.

CZM consistency concurrence is not an endorsement of the project nor does it convey approval with any other regulations administered by any State or County agency. Thank you for your cooperation in complying with Hawaii's CZM Program. If you have any questions, please call John Nakagawa of our CZM Program at 587-2878.

Sincerely,

Mary Lou Kobayashi
Planning Program Administrator

c: Mr. Bill Lennan, U.S. Army Corps of Engineers
Department of Planning, County of Maui

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

2145 WELLS STREET, SUITE 106
WAILUKU, MAUI, HAWAII 96793
PHONE: (808) 243-5824 FACSIMILE (808) 243-5829

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

BOR-M 2211.04

May 3, 2004

Mr. James Coon, President
Trilogy Corporation
P.O. Box 1119
Lahaina, HI 96761

Dear Mr. Coon:

Thank you for your letter updating me on the intended repairs to the Trilogy pier at Manele small boat harbor. I have recently been given a structural observation report on the stability of the pier. The engineer has recommended that, due to safety concerns, the Trilogy loading dock be closed until structural repairs have been completed. While I know that you are in the process of completing repairs, it is important that the State protect itself from any injuries that may occur between the time we were informed of the recommendation and the time repairs are effectuated. I would appreciate it if you would close the pier not later than 4:30 p.m., May 7, 2004.

The Trilogy pier was originally constructed by Trilogy to ease congestion at the small boat-loading pier. It may be necessary to embark and disembark your passengers at that location until the Trilogy dock is repaired. Please contact Sherry Menze at (808) 559-0723 so that she may work with you in coordinating this temporary solution. If you can think of another alternative solution, please do not hesitate to contact me at 243-5824.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carol Shé".

Carol Shé
Maui District Manager

cc: BOR
BOR-MML

RECEIVED

March 11, 2011 Tsunami Event

Damage Assessment Report for the Manele Small Boat Harbor, Lanai, Hawaii

Background Information

The tidal ebbs and surges, which began around 3 A.M. on Friday, March 11, continued throughout the day and were still noticeable to a lesser degree on Saturday.

In the case of fixed docks various mechanisms caused the damage, one being uplift forces on the underside of dock structures which caused localized deck failure which in most cases is repairable, however in others the uplift caused the structural members to break and fail, necessitating their complete replacement. Especially prone were the wooden dock structures to this type of damage. More devastating were the strong and rapid surges in the inner harbor basin, which dislocate 2.5 to 3.5-ton armor stones from the tip of Rock Groin Nos. 2 and 3; concrete footing for the Ferry Pier, Public and Launch Ramp Loading docks.

Based on the inspection of debris lines and the observations of harbor users, who were at the harbor during the Tsunami event, we have determined that the water fluctuated from -4 to +10 MSL during the Tsunami event.

The ferry pier and public loading dock, which both sustained major damages were temporarily closed from March 11, 2011 to March 15, 2011. Expeditions (Lanai Ferry) was allowed to modify Slip No. 22 and to use it on a temporary basis to load and unload passengers and luggage, however only the smaller Expeditions I and II vessels could use Slip No. 22. The ferry pier was repaired on March 15, 2011, allowing the larger ferry vessels to resume service on March 16, 2011. However, operations are not optimal, nor efficient because the larger ferry vessels have to back into the Ferry Pier because the vessels are configured to load and unload from the rear of the vessel. Also, the replacement ramp is narrower and steeper than the existing ramp.

Site Inspections of Affected Facilities

A visual survey of the Manele Small Boat Harbor was conducted by Eric Yuasa, Engineering Branch Head and Edward Underwood, Administrator, DOBOR on March 15, 2011, to assess the condition of the Ferry Pier and adjacent public loading dock. Subsequent site visits were conducted by FEMA, State Civil Defense and DOBOR in March and April 2011. Detailed site surveys, including underwater inspection of damaged facilities were conducted by a Civil and Structural Engineer on March 15, 2012; and Electrical Engineers on March 30, 2012.

Ferry Pier

The Ferry Pier, which was constructed in 1998 is a little over 70' long and 11 to 12' wide. It is topped with wooden and composite lumber decking attached to wood and steel beams or joists supported by concrete footings (inside) and steel pipe columns on concrete footings (outside). Both concrete footings are cast onto the rock groin side slope. The steel pipe columns and concrete

footings are located approximately 5'-6" inside from the outside face of the pier. An aluminum ramp 4' wide and 50' long, which was constructed shortly after the pier was completed and stairway, which was constructed in 2008 provided access from the pier to the landside boarding area. The Ferry Pier was last inspected in 2004 and found to be in good condition. Based on the March 15, 2011 inspection, it was determined that the inboard portion of the Ferry Pier, which is approximately 54' long can continue to be used to load and unload passengers and materials from the ferry, recreational and commercial vessels once the wooden deck boards are replaced.

The outboard portion of the Ferry Pier, which is approximately 16' long was damaged by the Tsunami Event and is no longer safe for use by the public. This damaged portion was taken out of service and barricaded. Based on discussions with the ferry operator, the outside face of the damaged Ferry Pier was determined to be safe for the crew to access the outboard cleat to secure the larger ferry vessels (Expeditions IV and V).

The movement of the armor stones from the rock groin caused the four (4) outboard concrete footings to shift. The outside outboard concrete footing not only shifted but dropped approximated 1-1/2 feet causing the end of the Ferry Pier to sag. The concrete footings are beyond repair and will be replaced.

Rock Groin No. 3

The existing rock groin was constructed approximately in 1986. The top of the rock groin is approximately 8 feet wide and at elevation +6 MSL. The groin slopes down towards the mudline with side slopes of 1.5 to 1. The mudline is approximately at elevation -6 MLLW. The rock groin was last inspected in 2004 and found to be in good condition and to be structurally stable. The tip of the existing rock groin (Groin No. 3), approximately 15' was damaged by the Tsunami Event. The armor stones were dislocated and moved to adjacent areas.

Rock Groin No. 2

The Rock Groin No. 2 is similar to Groin No. 3. See the description under Rock Groin No. 3. The tip of the existing rock groin (Groin No. 2), approximately 10' was damaged by the Tsunami Event. The armor stones were dislocated and moved to adjacent areas.

Public Loading Dock (Trilogy Pier)

The public loading dock is approximately 17' wide and 60' long. It is topped with wooden planks attached to wood and steel beams or joists supported by concrete footings (inside) and steel pipe columns (outside). The inside concrete footings are cast onto the side slope of the rock groin. The loading dock was last inspected in 2004 and the main supporting beams were found to be structurally unsound due to severe corrosion. Subsequently, the loading dock was repaired with additional wooden beams, new deck boards and concrete footings and continued to be in service until the March 11, 2011 Tsunami Event.

We have determined that the inboard portion of the loading dock, which is approximately 20' long can continue to be used to load and unload passengers and materials from the ferry, recreational and commercial vessels. The outboard portion of the loading dock, which is approximately 40' long was damaged by the Tsunami Event and is no longer safe for use by the public. This damaged portion was taken out of service and barricaded. Access is limited to vessel operators only to access the outboard cleat.

Launch Ramp Loading Dock

The Launch Ramp Loading Dock was approximately 3'-6" wide and 60' long. It was topped with wooden planks attached to two (2) wood beams supported by a concrete landing (inside) and three (3) concrete footings. The last concrete footing was cast onto the revetment armor stones and the two (2) middle concrete footings were cast onto the harbor sediment. The Launch Ramp Loading Dock was completely destroyed by the Tsunami Event and is not salvageable. The Loading Dock was removed.

Slip Nos. 11/12 Finger Pier

The Finger Pier is approximately 3'-8" wide and 56' long. It is topped with wooden planks attached to two (2) wood beams supported by concrete landing (inside) and two (2) concrete pile caps on 12" square concrete piles. The outboard section of the pier was completely destroyed by the Tsunami Event and subsequently removed. The inboard section of the pier is salvageable.

Electrical System and Lighting

Surge from the tsunami inundated the underground electrical junctions and conduits, lighting and sewage pump out. Most of the lighting and some of the electrical outlets around the harbor were damaged beyond repair. The sewage pump out was damaged beyond repair.

Damage Cost Estimates

The FEMA damage cost estimates (\$976,707) are significantly less than the State's damage cost estimates (\$2,493,063), however, because this is a large FEMA project, FEMA will pay for actual project costs.

Project Status

- Bow Engineering and Development, Inc. Selected on July 14, 2011
- State funding released by the Governor on October 11, 2011
- FEMA funding approved on November 28, 2011
- Contract awarded to Bow Engineering and Development, Inc. on January 31, 2012
- Design Start: March 1, 2012
- Anticipated Design Completion: September 2012
- Anticipated Construction Start: January 2013

MANELE SMALL BOAT HARBOR FERRY PIER

EXISTING PIER

The existing wooden ferry pier and public loading dock are constructed on the sides of an existing rock groin and both are in dire need of repair to mitigate health and safety concerns and to enhance ferry service operations. Both structures and the rock groin were badly damaged by the March 11, 2011 Tsunami Event. The ferry pier and adjacent public loading dock were both temporarily closed from March 11, 2011 to March 15, 2011, due to safety issues. Ferry service to Lanai was cancelled on Friday, March 11, 2011, and limited ferry service resumed on March 12, 2011. Temporary repairs to the ferry pier and public loading dock by the harbor users were completed on March 15, 2011.

Due to its small population and modest economic base, the island of Lanai has limited employment opportunities and is unable to sustain many basic social, governmental, and essential health services. As a result, Lanai experiences some of the highest unemployment and welfare rates in the State and requires residents to commute to the island of Maui to obtain basic social and essential health services. Some Lanai residents also commute to the island of Maui on a daily basis for employment due to limited job and business opportunities on Lanai. In addition, some residents from Maui, mainly in the construction and medical fields commute regularly to work on Lanai.

The interisland commuter ferry currently loads/unloads passengers at the pier five times daily. In addition, the pier and public loading dock serves seven privately owned boats that have permits to transport passengers between Maui and Lanai, as well as other recreational and commercial vessels.

GENERAL PROJECT DESCRIPTION – PROPOSED FERRY PIER

The project will remove the existing wooden ferry pier and public loading dock, including steel support structures that are attached to the existing rock groin. To minimize impacts to the environment, the existing ferry pier and public loading dock will be replaced with a similar size or smaller structures, which will be located within the existing foot prints of both piers.

The new aluminum framed piers will be supported by cast-in-place concrete beams attached to precast concrete piles along the outside face of both piers and the center of the existing rock groin. The aluminum frame will be topped with fiberglass or fiber reinforced plastic grating. The grating will allow surge and wave energy to pass through the decking instead of being trapped beneath the decking and creating an uplift force beneath the pier. In addition the ferry pier deck elevation will be raised by 12" and the deck elevation of the public loading dock lowered by approximately 16" to match the ferry pier elevation of 5.0'. A 12' wide concrete ramp running along the center of the existing rock groin will provide ADAAG compliant access to both piers. The new materials will provide durability and low maintenance as well as strength to withstand the harsh marine environment.

Ancillary work includes some maintenance dredging and improvements to an existing finger pier or construction of temporary loading dock to facilitate its use by the commuter ferry during the construction period. The dredging will also mitigate the re-suspension fine sediment from the harbor bottom by construction equipment and vessels. Full depth silt curtains and/or barriers

will be used to protect corals growing on the existing rock groins and revetment from the re-suspended sediment.

COMPLETED GOALS

1. Completion of study by USFWS.
2. Preparation and acceptance of NEPA Categorical Exclusion.
3. Preparation and acceptance of a grant to obligate the design funding.
4. Preparation of request to the Governor to release \$150,000 in State funding appropriated by the legislature under Act 213, SLH 2007. Signed by Governor on March 14, 2012.

CURRENT GOALS

1. Public meetings held to obtain public input and buy-in. A meeting with the Manele Harbor Advisory Group is scheduled for March 30, 2012.
-
2. Select Design Consultant (March 2012) and begin design work (June 2012).
 3. Preparation and acceptance of a grant to obligate the construction funding (September 2012).
 4. Complete Design and Permits (May 2013).

FUNDING

PLANNING – Grant HI-03-0044: \$540,000 total (\$432,000 FTA and \$108,000 State)

DESIGN – Estimate: \$750,000 (\$150,000 State and \$600,000 Federal)

CONSTRUCTION – Estimate: \$6,200,000 (\$1,250,000 State and \$4,950,000 Federal)

*State funding: Act 213, SLH 2007, as Amended by Act 158, SLH 2008, Item H-15, Lump Sum CIP-Ferry System Improvements, Statewide.



DIVISION OF BOATING AND OCEAN RECREATION

Department of Land and Natural Resources, State of Hawaii

Manele Harbor

P.O. Box 1099, Lanai City, HI 96763

Phone: (808) 559-0723 •



Effective Date: 09/23/2011

Permit Number: CM000478

Account Number: 00009352

PERMIT COMMERCIAL USE MOORING

Name: J. Coon

Initial Issuance Date: 04/20/1997

Business Name:

Permit Expiration Date: 08/31/2012

Vessel Name: Trilogy

Vessel Doc Type: Coast Guard Documentation

Vessel Doc #: 993-450

Mooring Type: Along Catwalk

Assigned Mooring/berth: 24

Hull Multiplier: 2

Barge Rate: no

Vessel Type: Sailing Vessel

Vessel Use Type: Commercial Passenger

Vessel Length Overall: 64 feet 0 inches

Passenger Capacity:

APPROVED:
STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

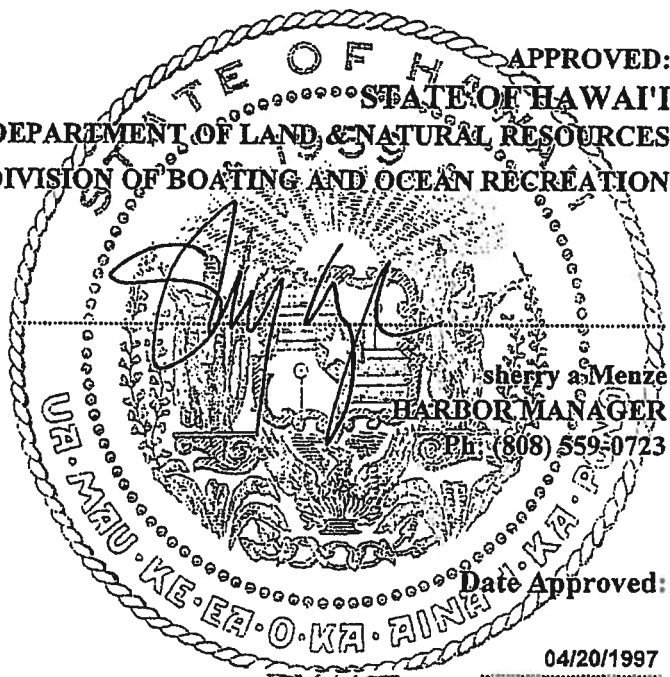


EXHIBIT 13

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING & OCEAN RECREATION

LNR 3-137
(Rev. 5/97)

Type of Agreement:

MOORING PERMIT

No. M 0843

9352

Initial

New

Revision

Other

Renewal

Account No.

Date

0890C006054-02
9/23

192611

This permit is for a berth in the Mamala Boat Harbor at Berth No. 24 for boat with
Registered/Documented No. 993-450 Name of Boat TRilogy Length (overall) 64 Length on Deck 64

I agree to the following terms, conditions, and charges:

1. I agree to abide by all rules promulgated by the Department of Land and Natural Resources and conditions of this permit. Rules are available for purchase at District and Harbor offices.
2. The Boat will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
3. The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

(1) Mooring

\$

710.08

(2) Electricity

\$

(3) GearLocker

\$

(4) Security Deposit

\$

(5) Other

\$

(6) Monthly Payment

\$

4.74 x 2 x 1.5 = 14.22 x 64 = 910.08

4. A mooring permit may be cancelled by a boat owner upon 30 days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbors Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
 5. This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
 6. This Mooring Permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules).
 7. The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or to any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents and employees from any and all manner of actions, liability, and claims arising out of or incident to said mooring, including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
 8. This mooring permit shall not exceed one (1) year from 9/28/11 and the mooring privilege under this permit terminates on 9/27/12
(Date) (Date)
- A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.
9. The department retains the right to not issue a new permit after the termination date of this permit.

Permittee Signature

DOBAX 1119

Home Address

808-667-7766 FAX 661-4743

Phone: Home

Work

LAHAINA HI 96767

City

State

Zip

James COON V. PRES

Printed Name of Permittee

APPROVED:

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

By

ADDENDUM NUMBER 01 TO MOORING
REQUEST AND AGREEMENT NUMBER 0843

The State of Hawaii, by its Chairperson of the Department of Land and Natural Resources, and Trilogy Corp/C & Sea Ocean Sports, hereinafter referred to as the "PERMITTEE", hereby agree to the following additional provisions to the Mooring Request and Agreement Number 01.

This permit addendum shall not exceed one year from September 29, 2011 and unless it is renewed before the expiration date, the permit shall expire on September 28, 2012.

Alternate/additional vessel to be moored in accordance with Section 13-231-69 (b), of the Hawaii Administrative Rules for Small Boat Harbors, in berth number 24, Manele Small Boat Harbor.

VESSEL NAME: MANELE KAI
REG/DOC. NUMBER: 1056613

LEASE EXPIRATION:

VESSEL CERTIFIED FOR: 24 PAX EXPIRATION Jan 26, 2014

INSURANCE COMPANY: National Casualty Company

POLICY NUMBER: OMO 001 2442 & OMO 001 2443

AMOUNT COVERAGE: 1,000,000

EXPIRATION DATE: 8/06/2012

TYPE OF COVERAGE: P&I

ADDITIONAL COVERAGE: Excess 1,000,000

PERMITTEE: C & Sea Ocean Sports

P.O. Box 1119

ADDRESS

Lahaina, Hi 96761

City State Zipcode

661-3756 (661-4743)

Signature 

APPROVED: STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN
RECREATION

BY: 

Date 9/23/2011

ADDENDUM NUMBER 02 TO MOORING
REQUEST AND AGREEMENT NUMBER 0843

The State of Hawaii, by its Chairperson of the Department of Land and Natural Resources, and Trilogy Corporation hereinafter referred to as the " PERMITTEE", hereby agree to the following additional provisions to the Mooring Request and Agreement Number 02.

This permit addendum shall not exceed one year from September 29, 2011 and unless it is renewed before the expiration date, the permit shall expire on September 28, 2012.

Alternate/additional vessel to be moored in accordance with Section 13-231-69 (b), of the Hawaii Administrative Rules for Small Boat Harbors, in berth number 24, Manele Small Boat Harbor.

VESSEL NAME: TRILOGY III
REG/DOC. NUMBER: 976 286
LEASE EXPIRATION:
VESSEL CERTIFIED FOR: 48 passengers
INSURANCE COMPANY: National Casualty Company
POLICY NUMBER: OMO 001 2442 & OMO 001 2443
AMOUNT COVERAGE: 1,000,000
EXPIRATION DATE: 8/06/2012
TYPE OF COVERAGE: P&I
ADDITIONAL COVERAGE: Excess 1,000,000

PERMITTEE: Trilogy Corporation

P.O. Box 1119

ADDRESS

Lahaina, Hi 96761
City State Zipcode

661-3756 (661-4743)

Signature 

APPROVED: STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN
RECREATION

BY: 

Date 9/23/2011

ADDENDUM NUMBER 03 TO MOORING
REQUEST AND AGREEMENT NUMBER M0843

The State of Hawaii, by its Chairperson of the Department of Land and Natural Resources, and Trilogy Corporation/ Maui Navigation hereinafter referred to as the "PERMITTEE", hereby agree to the following additional provisions to the Mooring Request and Agreement Number 03.

This permit addendum shall not exceed one year from September 29, 2011 and unless it is renewed before the expiration date, the permit shall expire on September 28, 2012.

Alternate/additional vessel to be moored in accordance with Section 13-231-69 (b), of the Hawaii Administrative Rules for Small Boat Harbors, in berth number 24, Manele Small Boat Harbor.

VESSEL NAME: TRILOGY VI
REG/DOC. NUMBER: 1102296
LEASE EXPIRATION:
VESSEL CERTIFIED FOR: 84 PAX EXPIRATION Oct 17, 2015
INSURANCE COMPANY: National Casualty Company
POLICY NUMBER: OMO 001 2442 & OMO 001 2443
AMOUNT COVERAGE: 1,000,000
EXPIRATION DATE: 8/06/2012
TYPE OF COVERAGE: P&I
ADDITIONAL COVERAGE: Excess 1,000,000

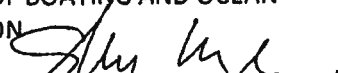
PERMITTEE: Trilogy Corporation

P.O. Box 1119
ADDRESS

Lahaina, Hi 96761
City State Zipcode

661-3756 (661-4743)

Signature 

APPROVED: STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN
RECREATION
BY: 

Date 9/23/2011

